

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 3:12-CR-040
	:	
v.	:	
	:	(JUDGE MARIANI)
	:	
FRED R. ROSETTI	:	
Defendant	:	

GOVERNMENT’S GUILTY PLEA
MEMORANDUM

This matter arose out of an investigation by personnel assigned to the FBI, Philadelphia Field Division, Scranton Resident Office, the Department of Education - Office of Inspector General, and the Pennsylvania Department of the Auditor General - Office of Special Investigations. The investigation established that Fred R. Rosetti committed the crimes of Mail Fraud, in violation of Title 18 U.S.C. § 1341, and Theft Concerning Programs Receiving Federal Funds, in violation of Title 18 U.S.C. § 666(a)(1)(A).

The defendant has signed a plea agreement wherein he has agreed to plead guilty to Counts 1 and 8 of the Indictment filed against him. A guilty plea to two counts of a multi-count indictment is consistent with the interests of justice since, even in multi-count indictments, the Government routinely accepts guilty pleas to only one count because the relevant conduct provisions of U.S.S.G. §1B1.3 permit the court to consider all conduct. The proposed plea is consistent with the policy set forth in the United States Attorney Manual which provides as follows:

9-27.300 Selecting Charges—Charging Most Serious Offenses

Except as provided in USAM 9-27.330, (precharge plea agreements), once the decision to prosecute has been made, the attorney for the government should charge, or should recommend that the grand jury charge, the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction. If mandatory minimum sentences are also involved, their effect must be considered, keeping in mind the fact that a mandatory minimum is statutory and generally overrules a guideline. The "most serious" offense is generally that which yields the highest range under the sentencing guidelines.

However, a faithful and honest application of the Sentencing Guidelines is not incompatible with selecting charges or entering into plea agreements on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the Federal criminal code, and maximize the impact of Federal resources on crime. Thus, for example, in determining "the most serious offense that is consistent with the nature of the defendant's conduct that is likely to result in a sustainable conviction," it is appropriate that the attorney for the government consider, inter alia, such factors as the Sentencing Guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Note that these factors may also be considered by the attorney for the government when entering into plea agreements. USAM 9-27.400.

In this case, the defendant is pleading guilty to what the Government considers the two most serious charges.

COUNT 1 - Mail Fraud in violation of Title 18 U.S.C. §1341. That crime is made up of the following elements:

First: That the defendant knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises;

Second: That the defendant acted with the intent to defraud; and

Third: That in advancing, furthering, or carrying out the scheme, the defendant used the mails, or caused the mails to be used.

Authority: Third Circuit Model Jury Instruction, 6.18.1341.

Maximum sentence on mail fraud count. The maximum penalty for that offense is imprisonment for a period of 20 years, a fine of \$250,000, a maximum term of supervised release of up to 3 years, the costs of prosecution, an order of restitution, denial of certain federal benefits, and an assessment in the amount of \$100.

COUNT 8 – The elements of Theft Concerning Programs Receiving Federal Funds, in violation of Title 18 U.S.C. §666(a)(1)(A), are as follows:

First: That at the time alleged in the Indictment, the defendant was an agent of the Northeastern Intermediate Unit #19 (NEIU).

Second: That the NEIU received annual benefits in excess of \$10,000 in each of the years 1999 through 2010 under a federal program involving a grant, contract, subsidy, loan, guarantee, and other form of federal assistance;

Third: That the defendant knowingly embezzled, stole, obtained by fraud, and otherwise without authority knowingly converted and intentionally misapplied property which was owned by and under the care and control of the NEIU; and

Fourth: That the value of the property embezzled, stolen, obtained by fraud, or otherwise intentionally misapplied by the defendant was at least \$5,000 in a one year period.

Authority: Third Circuit Model Jury Instruction, 6.18.666(a)(1)(A).

Maximum sentence on theft count. The maximum penalty for that offense is imprisonment for a period of 10 years, a fine of \$250,000, a maximum term of supervised release of up to 3 years, the costs of prosecution, an order of restitution, denial of certain federal benefits, and an assessment in the amount of \$100.

Alternative fine on charges. The defendant understands that under the alternative fine section of Title 18 United States Code, § 3571, the maximum fine on each offense could be increased to twice the amount of the gross gain or gross loss resulting from the offense.

PLEA AGREEMENT TERMS

The terms of the plea agreement are set forth in a document which has been filed of record. The defendant has agreed to plead guilty to Counts 1 and 8 of the Indictment. Additionally, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the Government and the defendant stipulate and agree to the following for purposes of sentencing.

The defendant's total offense level is 13 within Zone C of the United States Sentencing Commission Sentencing Guidelines. The defendant's criminal history category is I. With regard to the sentence of imprisonment to be imposed, the parties agree that the sentence of imprisonment shall be in the range of 12 to 18 months. The parties further agree that the Court shall retain full discretion to fashion the manner of service of the sentence of imprisonment within the range of 12 to 18 months consistent with applicable law and consistent with the type of sentence available at offense level 13, Zone C of the United States Sentencing Commission Guidelines. If the Court fails to accept all the stipulations of the parties entered into pursuant to Rule 11(c)(1)(C) of the Federal Rules of

Criminal Procedure, then either the defendant or the United States has the right to withdraw from the agreement and any guilty plea entered pursuant to the agreement.

Additionally, if the plea agreement is accepted by the Court, the United States shall make a recommendation for a sentence of imprisonment it considers appropriate within the range of 12 to 18 months. The United States has specifically reserved the right to recommend a sentence up to an including the maximum sentence within the agreed upon range and fine allowable together with the costs of prosecution.

Additionally, the defendant has agreed to settle all forfeitures for a monetary amount equal to the amount of restitution the Court determines at sentencing. Both the United States and the defendant will recommend to the Court that the amount of restitution is \$120,000.

With the exception of the binding agreement relating to the imprisonment range of 12 to 18 months, the parties agree that the Court shall retain full discretion over all other aspects of the sentence to be imposed. Further, if the Court imposes a sentence of imprisonment within the range of 12 to 18 months with which the defendant is dissatisfied, the defendant will not be permitted to withdraw his guilty plea for that reason alone. With the exception of the binding provision that the defendant shall receive a sentence of imprisonment within the range of 12 to 18 months, the defendant will not be permitted to withdraw any plea should the Court decline to follow any other recommendations by any of the parties to the agreement.

Additionally, upon the issuance of the Final Order of Forfeiture and payment in full of the restitution order, the Government will move to release any remaining funds that were frozen as a result of the seizure warrants filed under the Middle District of Pennsylvania docket numbers 3:12-MC-82, 3:12-MC-83 and 3:12-MC-84.

The defendant understands the Government's agreement to return any remaining funds does not bind the Internal Revenue Service which retains all of its rights to undertake appropriate lawful action to collect taxes or to seize assets to satisfy those taxes.

Paragraph 32 of the plea agreement indicates that the ends of justice are served by the terms and conditions contained therein. The Government believes that the ends of justice are served for the following reasons.

The defendant has indicated he is prepared to acknowledge to the Court that he is guilty of the crimes alleged in Counts 1 and 8 of the Indictment. The defendant has affirmatively indicated to the United States Attorney's Office that he is prepared to clearly demonstrate a recognition and affirmative acceptance of responsibility for the conduct alleged in the factual basis attached hereto.

The defendant's guilty pleas relieve the Government of its burden of litigating a lengthy and costly criminal trial. The Government conservatively estimates that a trial in this case would last anywhere from 3 to 4 weeks. The defendant's guilty pleas permit the Government and the Court to allocate resources most efficiently.

In addition, an estimated 50 of the 70 or more witnesses who would have testified at trial are current employees of the NEIU. Those witnesses would have been required to appear for trial preparation meetings as well. The defendant's guilty pleas avoid further disruption of the staff and resources of the NEIU. The NEIU has indicated to counsel for the Government that a criminal trial would place a burden on its ability to carry on in its daily business, including serving the special education needs of children. The NEIU concurs in the proposed resolution of the case and is satisfied to resolve remaining financial issues with the defendant, if any, in civil court if necessary.

With respect to the loss amount, it is the Government's position that \$120,000 is the loss amount that is readily provable without dispute. Potential additional loss amounts present difficulties with respect to assigning a dollar value. It is the Government's position that engaging in lengthy litigation concerning loss would not serve the interest of justice since even if the Court authorized all possible losses in excess of \$120,000, the loss amount would move up only one category in the fraud table under §2B1.1.

With respect to the sentencing guidelines, the crimes to which the defendant is pleading guilty would likely be "grouped" for sentencing purposes. Pursuant to U.S.S.G. §3D1.2, when counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan, they shall be grouped together in a single group with no increase in the offense level.

With the above calculations in mind, and a recommended loss of \$120,000, plus the addition of a 2 level enhancement for abuse of a position of trust pursuant to §3B1.3, the defendant's advisory guidelines range is 15 to 21 months. Under the terms of the plea agreement, the Court will have the discretion to sentence the defendant within the range of 12 to 18 months. It is significant to the Government that 18 months is the mid-range of what the guidelines would be without the 11(c)(1)(C) agreement.

Finally, the Government is cognizant of the fact that there will be collateral financial consequences for the defendant as a result of the guilty pleas he enters before this criminal Court. Those consequences are out of the control of the Government but have certainly been considered by the Government.

For all of the above reasons, the Government believes that the terms and conditions contained in the plea agreement meet the ends of justice.

Respectfully submitted,

PETER J. SMITH
United States Attorney

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October 15, 2012

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA	:	CRIMINAL NO. 3:12-CR-040
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v.	:	(JUDGE MARIANI)
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FRED R. ROSETTI,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of October, 2012, I caused the foregoing Guilty Plea Memorandum to be filed via ECF and that defense counsel, William A. DeStefano, is a filing user under the ECF system. Upon the electronic filing of a pleading or other document, the ECF system will automatically generate and send a Notice of Electronic Filing to all filing users associated with this case. Electronic service by the Court of the Notice of Electronic Filing constitutes service of the filed document and no additional service upon the filing user is required.

/s/ Michelle L. Olshefski
Michelle L. Olshefski
Assistant United States Attorney